



**Ninety-Eighth Legislature - First Session - 2003**  
**Committee Statement**  
**LB 59**

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**Hearing Date:** January 31, 2003

**Committee On:** Judiciary

**Introducer(s):** (Byars)

**Title:** Adopt the Cremation of Human Remains Act

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

7 Yes                      Senators Brashear, Foley, Mines, Mossey, Pedersen, Quandahl,  
Tyson

No

Present, not voting

1 Absent                      Senator Chambers

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**Proponents:**

Senator Dennis Byars

Bill Lauber

Steve Brunken

Larry Stiverson

**Representing:**

Introducer

Nebraska Funeral Directors Association

Nebraska Funeral Directors Association

Nebraska Cemetery Association

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

Legislative Bill 59 creates the Cremation of Human Remains Act (Act). The Act provides statutory standards and licensure for the practice of cremation and operating crematories.

The Act provides that human remains shall only be cremated at a crematory. No crematory shall operate in the state unless it is licensed by the Department of Health and Human Services (Department).

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### **Application process:**

An applicant for an initial or renewal license as a crematory must file a written application with the Department. The application must be accompanied by a fee of at least \$50 and the Department may charge an additional fee of up to \$300. The fee shall be returned to the applicant if a license is denied, but the Department may retain up to \$25 of the fee for administrative purposes. The Department may charge the same fee for renewal of a license. The Act provides for fees for the Department to certify that a crematory is licensed and to issue copies of licenses.

The Department may deny or refuse a license for any of the following grounds:

- violation of the Act;
- conviction of any crime involving moral turpitude;
- conviction of a misdemeanor or felony under any state or federal law if such has a rational connection with the fitness or capacity of the applicant;
- conviction of operating an unlicensed crematory
- committing or permitting, or aiding or abetting the commission of any unlawful act;
- obtaining a license by false representation;
- misrepresentation in the operation of a crematory;
- or failure to allow access to the crematory by the Department.

### **Regulation authority of the Department:**

The Department is provided with the authority and the process thereto, to inspect any licensed crematory to ensure compliance with the required standards of the Act. The Act establishes a process for sanctioning licensees that are found to be not in compliance with the rules and regulations.

Any person may file a complaint about a crematory with the Department. Identifying information about a complainant shall be confidential and shall be immune from criminal and civil liability. The Department is given the duty to investigate complaints and the authority to fine, suspend, limit, revoke, or close the licensee either temporarily (up to ninety days) or permanently. The Act provides for a hearing process by which the licensee can contest the sanction from the Department. The Department may also seek an injunction to halt a person cremating if such person does not have a license.

### **Standards for operation of crematories:**

The Act imposes standards for the acceptance of human remains; the storage thereof, including the use of appropriate containers; and the appropriate process for cremating human remains.

A crematory shall not cremate human remains until it receives a cremation authorization permit form that is signed by the authorizing agent and that:

- identifies the deceased,
- identifies the funeral director responsible for preparation of the deceased for cremation,
- contains notification that the deceased did not succumb to a contagious disease dangerous to the public,
- identifies the authorizing agent and the relationship of such agent to the deceased,
- contains notification as to whether any person objects to the human remains being cremated,
- states that the remains do not contain any materials that could be harmful to the equipment involved in the cremation process,
- identifies the person authorized to claim the human remains and,
- states the intended disposition of the cremated remains.

A crematory shall maintain such documentation for at least seven years, in printed or electronic form.

If a crematory is aware of a dispute regarding the human remains, it may refuse acceptance of such remains or may hold the remains, cremated or not, until the dispute has been resolved. The Act provides for standards for shipping and the delivery of remains following cremation.

Any person who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts on such form, including the identity of the deceased, and shall be personally liable for all damages resulting from false, incorrect or misleading information.

No human remains shall be knowingly cremated if such contains pacemakers, or similar equipment or jewelry or other valuables. The Act requires crematories to clean the cremation facility after each use.

**“Grandfather” clause:**

Crematories that are presently operating within the state have sixty days from the effective date of the Act to apply for licensure and shall be presumed to meet the requirements for licensure.

**Collateral statutory amendments:**

LB 59 amends the statutes regarding the power of attorney for health care – Sections 30-3401, 30-3408, 30-3417, and 30-3420, to allow a competent adult to authorize another adult to comply with decisions relating to organ donation, autopsy, and disposition of the adult’s body.

**Explanation of amendments, if any:**

The committee amendment (AM0374) makes several changes to the bill, all of which are consistent with the intent of the bill.

The amendment eliminates the provision that allows for the Department to impose a license fee discretionarily and instead sets a standard fee of \$300 for issuance and renewal.

The amendment deletes a provision that provides for potential disqualification from receiving a license, specifically “committing or permitting, or aiding or abetting the commission of any unlawful act”.

The amendment also deletes the proposed revisions to current statutes that govern the power of attorney authority to make, on behalf of a decedent, decisions relating to health care, organ donation and autopsies. Finally, the amendment clarifies that the authorizing agent is not to be considered the power of attorney.

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**Senator Kermit A. Brashear, Chairperson**